

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELIAS ROSAS and ANTONIO
VILLAGOMEZ,

No. C 08-05259 WHA

Plaintiffs,

v.

**ORDER RE MOTION TO
DISMISS**

ETS SERVICES, LLC, GMAC
MORTGAGE, and DOES 1-50, inclusive

Defendants.

On October 23, 2008, plaintiffs initiated this action by filing a complaint in the Superior Court of California, County of Alameda. On November 20, 2008, defendants removed the complaint to this Court.

On January 16, 2009, defendants filed a motion to dismiss plaintiffs' complaint. The motion to dismiss was noticed for a February 26 hearing. Plaintiffs did not file an opposition to the motion on the February 5 due date. The Court staff left a message with plaintiffs' counsel requesting they immediately file an opposition brief or a statement of non-opposition. The Court also issued a notice providing plaintiffs with another opportunity to respond by setting a new deadline of February 17 for plaintiffs to file an opposition, and the Court warned that "[p]laintiffs' failure to respond will very likely mean dismissal of their case for a failure to prosecute" (Dkt. 24). To date, plaintiffs still have not filed an opposition or a statement of non-opposition. Apparently, this failure to respond to the motion is consistent with plaintiffs'

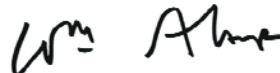
1 counsel's conduct in similar cases. In fact, other district courts have granted motions to dismiss
2 similar complaints filed by plaintiffs' counsel, and some courts have expressed concern that
3 plaintiffs' counsel is improperly using the judicial process to delay foreclosures. The Court has
4 also learned that plaintiffs' counsel is a vexatious litigant and their law offices have been shut
5 down recently.

6 In the motion to dismiss, defendants argue that plaintiffs' complaint is premised on the
7 flawed legal theory that a loan servicer and/or trustee on a deed of trust must have physical
8 possession of the original mortgage note to commence nonjudicial foreclosure proceedings.
9 Having reviewed the moving papers and the record, defendants' motion to dismiss appears to be
10 well taken and should be granted. The Court will dismiss this case unless **WITHIN TWENTY-**
11 **ONE** calendar days plaintiffs appear *pro se* or have a new lawyer file a notice of appearance and
12 show cause why the case should not be dismissed. The hearing and case management
13 conference scheduled for February 26, 2009 is **VACATED**.

14 The existing attorneys must serve copies of this order on the named plaintiffs **WITHIN**
15 **THREE DAYS** of the date of this order. Service by first class mail will be sufficient.

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17 **IT IS SO ORDERED.**

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19 Dated: February 19, 2009

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21 WILLIAM ALSUP
22 UNITED STATES DISTRICT JUDGE
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